

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

April 15, 1999

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

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22. : Docket No. WEVA 99-65

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RIVER POINT PROCESSING INC.

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) ("Mine Act"). On March 5, 1999, the Commission received from River Point Processing Inc. ("River Point") a request to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a) of the Mine Act, an operator has 30 days following receipt of the Secretary of Labor's proposed penalty assessment within which to notify the Secretary that it wishes to contest the proposed penalty. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

In its motion, River Point states that its facility was shut down at the time the assessment issued. The operator also requests that the \$55.00 proposed penalty assessment be waived due to the operator's dissolution in bankruptcy court.

On March 26, 1999, the Commission received a memorandum from Tamara Nelson, Chief of the Compliance Group with the Department of Labor's Civil Penalty Compliance Office. In the memorandum Ms. Nelson states that, because River Point Processing Inc. was sold on August 20, 1998, and is no longer in the mining business, the case is being closed as uncollectible.

Based on the foregoing, we deny River Point's motion to reopen as moot. *See generally*

Phelps Dodge Morenci Inc., 17 FMSHRC 1525 (Sept. 1995) (granting motion to withdraw Motion for Relief from Final Order where proposed penalty assessment was rescinded). Accordingly, this proceeding is dismissed.

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Jr., Commissioner

Distribution

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